THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22686 2006

Dated: 17-11-2006

Between:

K. Rukka Reddy.

..... PETITIONER

AND

The Joint Collector, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.22686 2006

ORDER:

The petitioner and eight others filed an application under Section 40 of the Andhra Pradesh (Tenancy Area) tenancy & Agricultural Lands Act, 1950 (the Act, for brevity) seeking sanction of succession of tenancy rights before the second respondent, the Mandal Revenue Officer (MRO). They allege that their father late Janga Reddy, and three others, namely, Chandra Reddy, Komraiah and Narayana Reddy were joint protected tenants of land admeasuring Acs.5-20 guntas in survey No.143 to 147 situated at Nizampet Village, Quthbullapur Mandal in Ranga Reddy District. These predecessors obtained tenancy certificates under Sections 35 and 37 of the Act and Janga Reddy passed away on 18-04-1990. They also allege that after death of their father they succeeded to the tenancy and therefore they sought for grant of succession. In the said application they impleaded the third respondent herein as respondent, who opposed grant of succession to the petitioner and others alleging that the protected tenant Janga Reddy S/o Yella Reddy, who was also called Yerra Janga Reddy, was not Janga Reddy S/o Rukka Reddy, who is the father of the petitioner herein and that taking advantage of the similarity in the name, the petitioner and others were seeking grant of succession certificate. MRO overruled the objection and by proceedings dated 06-09-2003 granted succession observing that the applicants before him are entitled to 1/4th share in the land.

Feeling aggrieved by the said proceedings dated 06-09-2003 passed by MRO, the third respondent herein preferred an appeal under Section 90 of the Act before the first respondent, namely, the Joint Collector, who allowed the appeal being case No.F2/292/2004 dated 04-07-2006 on the ground that after long time from the date of demise of the protected tenant, the revenue authorities cannot grant succession to the legal heirs and that the civil dispute between the petitioner and others on the one hand and the third respondent on the other hand has to be resolved in a civil Court as such matter is a complex issue and accordingly set aside the order of MRO. This writ petition is filed against the order of the Joint Collector dated 04-07-2006.

The learned counsel for the petitioner submits that under Section 40 of the Act lineal descendents of the protected tenant are entitled to inherit the land under protected tenancy and when there is no dispute as to who are the legal heirs of the protected tenant, it is competent for the MRO to grant succession to the legal heirs. Secondly he would urge

that the third respondent did not raise any dispute before MRO regarding the identity of late Janga Reddy and therefore, the claim of the petitioner and others was rightly allowed by MRO. He nextly contends that when the protected tenant is recognized under Sections 35 and 37 of Act, all the legal heirs coming within the ambit of Section 40 of the Act can be recognized as protected tenants entitled for succession. The learned counsel also submits that the decision of this Court in **Syed Abdul Majeed and others v. Joint Collector-II, Ranga Reddy District**[1], is the subject matter of appeal in W.A.No.1444 of 2006 and therefore, the same cannot be pressed into service by the learned Assistant Government Pleader for Revenue (General-T) for denying the relief to the petitioner in this case.

The Joint Collector reversed the order of MRO on the ground that when the so called legal heirs approached MRO under Section 40 of the Act for succession after long lapse of time and when a dispute is raised regarding the identity of the protected tenant as well as the status of the persons claiming to be legal heirs, the revenue authorities cannot decide such complicated questions. The Joint Collector framed the question as to whether MRO, in exercise of powers under Section 40 of the Act, recognized succession to tenancy and incorporate the same in revenue records without any time limit from the date of demise of the protected tenant. After referring to Section 40 of the Act, the Joint Collector observed as under.

> As a result, recognition of rights of succession will not be amenable to a summary enquiry conducted by Revenue authorities. The issue would assume a complex dimension requiring a comprehensive adjudication by a Civil Court.
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> In short, claim for succession to Protected Tenancy after a long distance of time from the date of demise of the original Protected Tenant cannot be entertained by Revenue authorities in exercise of the powers U/s 40 of the Act. The issue assumes a Civil nature with lapse of time and has to be adjudicated by a Civil Court. Therefore the impugned order of Mandal Revenue Officer, Quthbullapur in Case No.A/7585/1998, dated 06-09-2003 is set aside and the parties are directed to approach the Civil Court for grant of succession.

In the narration part of the order of the Joint Collector, the objection raised by the third respondent is noticed. When the identity of Janga Reddy, the predecessor of the petitioner is itself in dispute, there is every justification for the Joint Collector to come to the conclusion as above. Secondly in **Syed Abdul Majeed** (supra) this Court considered the question whether Section 40 of the Act confers power on MRO to adjudicate questions of succession. This Court, after referring to the relevant provisions of the Act as well as the provisions of the Andhra

Pradesh (Telangana Area) Tenancy and Agricultural Land Rules, 1950 and also the unreported decisions of this Court in W.P.Nos.7018 and 7430 of 2000, held as under.

> The position in the case of protected tenancy in respect of which a certificate under Section 38E of the Act is not obtained is no different. Section 40 of the Act only declares that protected tenancy is heritable and that legitimate lineal descendants by blood or adoption of protected tenant shall be entitled to hold tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death. The same does not confer any power on any Revenue Authority much less MRO to decide disputed questions of succession. For instance if a question arises as to whether a person claims that he is a legitimate lineal descendant by blood or adoption, can it be decided by MRO. Legitimacy of a child is a matter for the Court to decide determining on the evidence as well as legal presumptions well recognized in law. Similarly, if there is a dispute between two or more persons claiming to be lineal descendants of the protected tenant, if their predecessor had already obtained a certificate under Section 38E of the Act and became absolute owner, it is not for the MRO to decide the question. Similarly, in the case of a protected tenant, who did not obtain a certificate under Section 32 of the Act, the MRO cannot decide the question, though it can be a matter of enquiry under the Rules, which essentially deal with preparation of preliminary record of tenancies of agricultural lands.

In view of the above ratio, exercise of such power by MRO was itself without jurisdiction. It is brought to the notice of this Court by the learned Assistant Government Pleader that the Letters Patent Bench only ordered notice in W.A.No.1444 of 2006. Therefore, the petitioner cannot get any benefit from out of the same.

The writ petition is devoid of merits and is accordingly dismissed. No costs.

V.V.S.RAO, J

17th November, 2006
Note: Issue CC in one week.
B/o
ghn

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[1] 2006(5) ALD 348